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1                   UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF MONTANA  
3                   MISSOULA DIVISION  
4  
5                   UNITED STATES OF AMERICA,                 )  
6                   Plaintiff,                                     )  
7                   vs.   ) Civil Action No.  
8                   W.R. GRACE & COMPANY, W.R. GRACE & )  
9                   CO., CONN., and KOOTENAI                     )  
10                  DEVELOPMENT CORPORATION,                     )  
11                  Defendants.                                     )  
12  
13  
14

Videotaped Deposition of RICHARD J. LEE

Saturday, September 28, 2002

The videotaped deposition of RICHARD J. LEE,  
called as a witness by the Plaintiff, pursuant to  
notice and the Federal Rules of Civil Procedure  
pertaining to the taking of depositions, taken before  
me, the undersigned, Terri J. Urbash, a Notary Public  
in and for the Commonwealth of Pennsylvania, at the  
Ramada Hotel, One Bigelow Square, Pittsburgh,  
Pennsylvania 15219, commencing at 9:03 o'clock a.m.  
the day and date above set forth.

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1 When we were originally doing our side by side  
 2 evaluation, was NIOSH 7400 or 7402, or a method that  
 3 could have been, it could have been AHERA, it could  
 4 have been Level II, it could have been ISO, that  
 5 simply restricted the size classes to be the long --  
 6 the Berman fibers, the Berman and Crump fibers or  
 7 Stanton fibers, something that pulls out those fibers  
 8 that determines in a realistic manner the potential  
 9 exposure to fibers that are believed to have the  
 10 highest potency. Those methods were available.

11 Q Dr. Lee, please turn to page 33 of your  
 12 report. Are you there?

13 A Okay.

14 Q You state, please correct me if I am wrong,  
 15 "EPA used the presence of amphiboles in the dust as  
 16 proof that an exposure pathway exists and that  
 17 historical exposures have occurred. EPA ignored the  
 18 fact that the presence of asbestos in dust has not  
 19 been showed to be a predictor for airborne fiber  
 20 levels and that the concentrations of amphiboles in  
 21 the dust were far below those indicating a historical  
 22 exposure." Did I read your opinion correctly?

23 A Yes.

24 Q Do you plan to give this opinion at trial?  
 25 A If asked.

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1 relationship, statistical or otherwise, between the  
 2 resuspension of airborne fibers and dust that is moved  
 3 by human activities?

4 A If the asbestos results in the dust results  
 5 from building materials, results from decomposition or  
 6 destruction or damage to building materials, that is  
 7 true. Dust measurements do not correlate in any  
 8 manner that I have seen with air measurement.

9 Q So there is no relationship whatsoever?

10 A We have found, and I don't believe anyone  
 11 has shown a relationship, we have found none and I  
 12 don't believe anyone has shown it.

13 Now --

14 Q Doctor, let me ask you a question.

15 A Could you wait till I'm finished?

16 Q It depends on if you are going to be  
 17 responsive to my question, Doctor.

18 A Maybe that's the rules here, but it seems  
 19 to me that I'm supposed to answer the question as best  
 20 I can without interruption, and then if I'm not  
 21 responsive, I don't know that -- I'm trying to be  
 22 responsive, but I still -- well, now I can't even  
 23 remember what my answer or the question was so I  
 24 guess --

25 Q I'd be happy to put the question back to

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1 Q Dr. Lee, are you saying that EPA attempted  
 2 to show a statistical correlation between dust in  
 3 homes and the amount of amphibole fibers that would  
 4 have been found in air if activities disturbed that  
 5 dust?

6 A No, I'm saying what I said there, not what  
 7 you said.

8 Q So you don't believe that we attempted to  
 9 create any kind of a statistical correlation between  
 10 what is in dust and what is in air?

11 A While I don't believe it or not believe it,  
 12 I didn't see any evidence that you had.

13 The way I saw EPA's data set was that they  
 14 looked -- they were looking for pathways, they were  
 15 looking at airborne, they were looking at dust, they  
 16 were looking at soil, and if they found those, if they  
 17 found amphiboles in one of those media, they concluded  
 18 that the pathway existed; okay?

19 Q So Doctor --

20 A That's the content of this sentence.

21 If they had, in fact, if they have, I'd be  
 22 welcome to see any correlation they did on what's in  
 23 the air with what's in the dust at Libby, particularly  
 24 relative to chrysotile versus amphibole concentration.

25 Q Doctor, is it your opinion that there is no

1 you and you can answer it completely.

2 A If you could attempt to.

3 Q Is there no relationship of any kind  
 4 between dust and what is in the air?

5 A Okay. Let me give you my answer, which I  
 6 think was being, was right on track, in my opinion,  
 7 and that is, in building materials, if the dust or  
 8 debris results from building material, we and others  
 9 have seen no correlation with the concentration of  
 10 dust -- of asbestos and dust as measured by the  
 11 current techniques and the airborne concentrations of  
 12 asbestos.

13 In fact, we have solid data that says  
 14 billions of structures in the dust, nothing in the  
 15 air; okay?

16 Now, is that always the case? The answer  
 17 to that is probably it depends on the form. If you  
 18 have an extremely well fiberized asbestos and it is  
 19 in dry -- deposited on dry dust, then under those  
 20 circumstances, you probably will get a correlation  
 21 between the amount of asbestos in dust, but you are  
 22 going to have to have two requirements, one, it be  
 23 dry, two, it be very highly fiberized.

24 Q Doctor, does it depends on the level of  
 25 activities that occurs in the dust?

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1 A In those cases it would very much depend on 2 the level of activity.	150 1 MR. COHN: Could you mark this for me, 2 please. 3 (Thereupon, Deposition Exhibit No. 713 was 4 marked for identification.)
3 Q Do you believe that if somebody sweeps a 4 dusty floor, I'm not talking about asbestos now, 5 somebody sweeps a dusty floor, there is no 6 relationship to what the amount of dust is where they 7 are sweeping and what's in the air?	5 Q Doctor, you have been handed what has been 6 marked as Exhibit 713, it is entitled "Dust And 7 Airborne Concentrations, Is There A Correlation," is 8 that not correct?
8 A Well, I don't see how that -- I think my 9 previous answer answered that, but I'd cite to you an 10 EPA study in Missouri that where they did a sweeping 11 study of a variety of conditions, EPA funded, I don't 12 know who actually paid for it, but they did a variety 13 of studies in furnace rooms and the like with various 14 concentrations of asbestos and dust and found no 15 correlation, sweeping and a variety of other 16 activities.	9 A No. 10 Q Hang on one second. 11 MR. COHN: Let's take a break for a 12 moment. 13 THE VIDEO OPERATOR: We are off the record. 14 The time is 2:05 p.m. 15 (Recess taken.)
17 Q Is that no statistical correlation or no 18 relationship whatsoever?	16 THE VIDEO OPERATOR: We are back on the 17 record. The time is 2:09 p.m. 18 BY MR. COHN: 19 Q Doctor, I am sorry about the error in 20 exhibits there. Let me try again. 21 A All right. 22 Q I have read it this time and I think it is 23 correct. 24 (Thereupon, Deposition Exhibit No. 714 was 25 marked for identification.)
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1 A Is there a relationship? 2 Q I didn't ask if there was a relationship 3 that involved the exceedance of a standard. 4 A I think my last answer stands. If you can 5 show that the dust is dry enough and the asbestos in 6 it was fiberized enough, in other words, you have 7 sufficient -- 8 Q Doctor, I didn't ask about asbestos. I 9 simply asked you, is there a relationship between dust 10 and the activity that disturbs it and what you would 11 find in it? 12 A I'm sorry. I was concentrating on this 13 case. And that answer is it depends on your 14 definition and the state of the dust. 15 Q If I were to sweep a floor that has dust on 16 it, would you expect to see dust in the air? 17 A The answer is -- that is a tremendous -- it 18 depends. Here is your issue. I grew up on a farm in 19 North Dakota. During midsummer during July, if I'm 20 out driving a tractor pulling a cultivator, there is a 21 dust cloud a half mile high. It rains, the next 22 morning I'm out there in that same field, there is not 23 a bit of dust being raised. I'm actively stirring up 24 the material in both cases, the difference is a half 25 percent moisture, so maybe, maybe not.	151 1 Q Doctor, before you look at this one 2 exhibit, let me ask you one more question if I might 3 on dust. 4 If you had the same conditions, that is the 5 same dryness, the same size dust, everything else, and 6 you had two instances where you had the same activity 7 involved, would you expect to see the same dust in the 8 air with that activity if one increased the amount of 9 activity and the other remained the same? 10 A On average. 11 Q What has been put in front of you as 12 Exhibit 714, I believe, finally, is your article "Dust 13 And Airborne Concentrations, Is There A Correlation"? 14 A My article? 15 Q Are you not the primary author? 16 A I thought it was Chatfield. 17 Q I'm talking about Exhibit 714. 18 A Oh, okay. All right. Yes. 19 Q Was this article based on -- 20 A I'm sorry, I thought you had said 21 Chatfield's article. 22 Q No, I'm sorry, I'm talking about the one 23 that is in front of you. 24 A All right. 25 Q What is the article -- was this article

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